

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BERIHU H. FEKADU,

Defendant and Appellant.

D054409

(Super. Ct. No. SCD109580)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick Maguire, Judge. Affirmed.

In December 1995 Berihu H. Fekadu pleaded not guilty by reason of insanity to two counts of a forcible lewd act upon a child (Pen. Code,¹ § 288, subd. (b)(1)) and three counts of assault with a deadly weapon or force likely to cause great bodily injury (§ 245, subd. (a)(1)). In January 1996 the trial court found Fekadu had not recovered his sanity and committed him to the Patton State Hospital for seven years under section 1026.

¹ Statutory references are to the Penal Code unless otherwise specified.

In February 1998 Fekadu petitioned for and was granted community outpatient release. The following February Fekadu petitioned the court for a finding that his sanity had been restored. After a bench trial, the court found Fekadu's sanity had not been restored and continued his commitment. Fekadu was allowed to continue his community outpatient release, but later that year the court revoked his outpatient status because of threats to a board and care administrator. Fekadu was returned to Patton State Hospital. In 2002 Fekadu again unsuccessfully petitioned the court for a finding that his sanity had been restored.

Fekadu again was granted community outpatient status in February 2003, but 15 months later the court revoked his outpatient status when he refused to take his medications. Fekadu returned to Patton State Hospital.

In 2004 the court granted the prosecution's petition to extend Fekadu's commitment for two years. (§ 1026.5, subd. (b).) In 2006 the court again granted the prosecution's petition to extend Fekadu's commitment for two years. At the end of 2007 the state Department of Mental Health transferred Fekadu to Napa State Hospital.

In July 2008 the prosecution filed another petition to extend Fekadu's commitment under section 1026.5. On December 3, 2008, the court found Fekadu was still suffering from a mental disorder and he posed a substantial danger of physical harm to others.

FACTS

On December 31, 1994, Fekadu was released from County Mental Health, where he was hospitalized on a 72-hour hold under Welfare and Institutions Code section 5150 after a woman complained to police that he stalked her and touched her inappropriately.

Following his release Fekadu went to a bar, where he annoyed some women by fondling them and bit the bartender who forcibly ejected him.

Fekadu then went to a restaurant, where he approached two girls who were standing by the back door. Fekadu began touching one of the girl's breasts, stomach and neck. The girl pushed Fekadu away and he started grabbing at the other girl's breasts. The girls ran from him into the restaurant kitchen where one girl's mother worked. Fekadu ran after the girls, but the mother grabbed a kitchen knife and chased Fekadu out. Within minutes Fekadu returned holding an eight-inch knife and yelling, "Don't come close to me, I'm God." The girls and restaurant employees fled into an office and locked themselves in until police arrived.

In September 2008 Fekadu underwent a psychiatric evaluation by Dr. Jaga Nath Glassman, who found him "very actively psychotic." Glassman reported that Fekadu "exhibited marked signs and symptoms of ongoing psychosis, with marked paranoid and grandiose delusions; disorganization of thought processes; odd and agitated affect; [and] very limited insight and judgment." Summarizing his findings, Glassman wrote, "Mr. Fekadu continues to be actively delusional, and he represents a significant danger to the community should he be released. He does not accept that he has a mental illness, has been actively refusing his medication, and has been violent and dangerous, even inside the hospital setting."

In October 2008 Fekadu underwent an evaluation by psychologist Raymond G. Murphy, who reported Fekadu "presents with delusional concepts and underlying psychotic potentials that could produce assaultive behavior during periods of

decompensation or failure to comply with medical treatment." Murphy added that Fekadu "certainly presents as a potential danger to the community at large" and recommended he be returned to Napa State Hospital for more treatment.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether substantial evidence supported the court's finding that Fekadu presented a substantial risk of harm to others; (2) whether there was a proper waiver of Fekadu's right to a jury trial; and (3) whether Fekadu's due process rights were violated because the prosecution filed its section 1026.5 petition 15 days late. The court's finding that Fekadu presented a substantial risk of harm to others is amply supported by the opinions of the evaluating psychiatrist and the evaluating psychologist. Both opined that Fekadu is psychotic, delusional, not ready to be released to the community, and has a high potential for assaultive behavior.

Counsel waived Fekadu's right to a jury trial. This was sufficient; an oral waiver by Fekadu was not necessary. (*People v. Powell* (2004) 114 Cal.App.4th 1153, 1159 [right to jury trial in section 1026.5 proceeding may be waived by counsel].) The lateness of the prosecution's section 1026.5 petition did not deprive Fekadu of his due process rights. The time limits of section 1026.5 are not jurisdictional. (*In re Johns* (1981) 119 Cal.App.3d 577, 580-581.) In *Johns*, the Court of Appeal endorsed a

prejudice inquiry as to whether a violation of time limits harmed the defendant. Fekadu has not claimed or shown prejudice by the 15-day tardiness in filing the petition. (See also *People v. Mitchell* (2005) 127 Cal.App.4th 936.)

We granted Fekadu permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Fekadu has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.